

RENE P. LAMOUREUX

IBLA 74-325

Decided May 16, 1975

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting for recordation, headquarters site location notice AA 8783.

Affirmed.

1. Alaska: Generally -- Alaska: Headquarters Sites -- Alaska: Possessory Rights -- Withdrawals and Reservations: Generally

A claimant's occupancy of a headquarters site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of April 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

2. Administrative Practice -- Alaska: Generally -- Alaska: Headquarters Sites -- Equitable Adjudication: Generally

A request for equitable adjudication relief to permit purchase of a headquarters site claim is premature in the absence of an application to purchase the claim.

3. Administrative Practice -- Alaska: Generally -- Alaska: Headquarters Sites -- Equitable Adjudication: Generally

The equitable adjudication authority is not appropriate and may not be applied to permit the filing of a headquarters site notice of location after the land has been withdrawn.

APPEARANCES: Rene P. Lamoureux, pro se.

DECISION BY ADMINISTRATIVE JUDGE THOMPSON

Rene P. Lamoureux, d/b/a Frenchy Lamoureux, on February 5, 1974, filed a notice of location of settlement as a headquarters site, with occupancy since August 1962, for land described only as township "30 S. R 46 W, SM". By a decision dated May 13, 1974, the Bureau's Alaska State Office closed the case and informed appellant that the notice was not acceptable for recordation because the land was withdrawn from all application and appropriation under the public land laws by Public Land Order No. 5181, dated March 9, 1972, as amended by Public Land Order No. 5388, dated September 14, 1973, and because the notice had not been filed within 90 days from the date of settlement as required by 43 CFR 2562.1(c).

Appellant acknowledges that the notice of location was late, but contends that his claim should be recognized, nevertheless. He states that he has substantial improvements on the land and has used the land since 1962 for his guiding and outfitting business. His request for recognition of his claim has two major thrusts.

First, appellant contends, in effect, that his occupation of the claim since 1962 established a valid existing right which was excepted from the withdrawal. Because appellant had not filed his notice of location prior to the withdrawal this argument cannot be accepted.

[1] The Act of April 29, 1950, 64 Stat. 94-95, as amended, 43 U.S.C. § 687a-1 (1970), requires a person who initiates a headquarters site claim (as well as certain other types of claims) to file a notice describing the claim within ninety days from the date of the initiation of the claim. It then states that:

[u]nless such notice is filed in the proper district land office within the time prescribed the claimant shall not be given credit for the occupancy maintained in the claim prior to the filing of (1) a notice of the claim in the proper district land office, or (2) an application to purchase, whichever is earlier. Application to purchase claims, along with the required proof or showing, must be filed within five years after the filing of the notice of claim under this section.

If the requirements of this Act are not met by the filing of a notice or application to purchase within 90 days from initiation of occupancy or prior to the withdrawal, the occupancy of the settler cannot be recognized as a valid existing right protected from the withdrawal. Gary Lee Slay, 18 IBLA 345 (1975); Ralph Edmund Marshall, 14 IBLA 233 (1974); Kennecott Copper Corp., 8 IBLA 21, 79 I.D. 636 (1972).

Second, appellant requests that under the equitable adjudication authority of 43 CFR 1871.1-1, we permit acceptance of the late filing of the notice of location, and allow him to purchase the claim. He contends that certain mistakes of land description, status of the land, and misinformation of Government employees, prevented him from filing the notice before the land was withdrawn.

[2] In the present posture of this case, it is premature to rule on the merits of the latter part of this request for equitable adjudication relief, i.e., the request to permit purchase of the claim. Appellant has not filed a purchase application. A case is not ripe for equitable adjudication until a purchase application is filed and a case is ready to be patented but for the mistakes or errors for which the equitable adjudication relief is sought. See James C. Forsling, 56 I.D. 281 (1938). Appellant raised his request for equitable adjudication for the first time in his appeal. If appellant desires to pursue such a request for relief and files a purchase application, we deem it better that he first present his request to the BLM's State Office in Alaska. The BLM should consider any such request in accordance with the procedures set out in the BLM Manual 1870 et seq. In making this suggestion, we

do not pass upon the merits of appellant's request for purchase of the claim or even whether he might be eligible for such relief if he files an application. 1/

[3] With respect to acceptance of appellant's late-filed notice of location, we can rule upon this request. It has been answered in part by the discussion before. A notice of location is not the equivalent of a purchase application. It is a mere notice that the person has gone upon the land and nothing more. The equitable adjudication authority, therefore, is not appropriate and may not be applied to permit the filing of such a notice after land has been withdrawn, in any event, and his request must be denied. See James C. Forsling, supra.

With respect to his notice, a few additional comments may be helpful. Appellant's notice does not describe the land in his headquarters site with the degree of specificity required by the regulations. 43 CFR 2563.2-1(b) requires that the land be described by legal subdivisions, section, township and range, if surveyed, or if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. Appellant's notice, at most, gives only the township and range. The notice would be unacceptable for recordation because it has an inadequate description, as well as for the reasons given by the Bureau.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

1/ In view of certain allegations made by appellant, we note, however, that generally there is no basis for equitable adjudication relief to permit purchase after a purchase application has been filed if neither the application nor notice of settlement was filed or deemed to have been filed properly prior to the withdrawal. Cf., James Milton Cann, 16 IBLA 374 (1974).

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

20 IBLA 247

